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Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21

Brunei Darussalam*

The present report is a summary of 2 stakeholders' submissions[1] to the universal periodic review. It follows the general guidelines adopted by the Human Rights Council in its decision 17/119. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. As provided for in Resolution 16/21 of the Human Rights Council, where appropriate, a separate section is provided for contributions by the national human rights institution of the State under review that is accredited in full compliance with the Paris Principles. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the periodicity of the review and developments during that period.

* The present document was not edited before being sent to United Nations translation services.

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Information provided by other stakeholders

Implementation of international human rights obligations

1. Right to life, liberty and security of the person

1. CRIN stated that in Brunei Darussalam, children may be lawfully sentenced to life imprisonment and corporal punishment for offences committed while under the age of 18. More specifically, CRIN noted that there was no explicit prohibition on life imprisonment for persons under the age of 18 in Brunei Darussalam and children could be sentenced to detention at the pleasure of His Majesty the Sultan and Yang di-Pertuan, an indeterminate sentence that may extend for the rest of a person's life.[2]

2. CRIN noted that corporal punishment in the form of whipping was lawful as a sentence for males convicted of a criminal offence. For boys below the age of 18, only the High Court is empowered to order the penalty.[3]

3. In this connection, CRIN specified that the Penal Code provided for the sentence of whipping for a wide range of offences. Whipping was also permitted as a criminal penalty under the Children Order 2000, the intoxicating Substances Act 1992, the Arms and Explosives Act 1927 and Rules 1928, the Misuse of Drugs Act 1978, the Public Order Act 1983, the Kidnapping Act 1992 and the Women and Girls Protection Act 1972. CRIN further stated that the Common Gaming Houses Act 1920 contained a specific provision for the whipping of young boys. The Unlawful Carnal Knowledge Act 1938 punished extra-marital carnal knowledge of a girl under 16 by whipping up to 12 strokes of the rattan for a youthful offender.[4]

4. In addition, CRIN noted that persons aged 8 to 17 might be whipped up to 18 strokes under the Criminal Procedure Code. The whipping must be inflicted on the part of the body directed by the Permanent Secretary, Office of the Prime Minister, and, for a youthful offender, with a light rattan "in the way of school discipline". Whipping should not be imposed on females. A medical officer or hospital assistant must be present and must certify that the offender is fit to receive the punishment.[5]

5. Global Initiative to End All Corporal Punishment of Children (GIEACPC) noted that since the previous review in 2009, there had been no change in the legality of corporal punishment of children: it remains lawful in the home, in schools, in the penal system – as a sentence for crime and as a disciplinary measure in penal institutions – and in alternative care settings.[6]

6. According to GIEACPC, Article 89 of the Penal Code 1951 states that, with certain exceptions, "nothing which is done in good faith for the benefit of a person under 12 years of age by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person". Article 28 of the Children and Young Persons Act 2006 (in force 2010) punishes child abuse which causes injury, which under article 2 must be "substantial and observable." As such, GIEACPC noted that the Act did not prohibit all corporal punishment.[7]

7. GIEACPC further noted that corporal punishment was lawful for boys. During the UPR in 2009, the Government stated that corporal punishment had been prohibited in schools since 1984. However, the Education (School Discipline) Regulations 2004, under the Education Act 2003, prohibited corporal punishment for girls but it provided that "corporal punishment of male pupils by a teacher or other member of the staff shall be in

accordance with and subject to a directive on corporal punishment issued by the Ministry" and "a record of all punishments imposed or meted out shall be kept confidential in a form approved by the Registrar General". According to article 6, "the power of inflicting corporal punishment shall not be delegated to any person other than a registered teacher". The Compulsory Education Act 2007 and the Compulsory Religious Education Act 2012 are silent on the issue.[8]

8. In addition, GIEACPC stated that corporal punishment was explicitly prohibited in child care centres in article 17 of the Child Care Centres Act 2006. But there was no prohibition of corporal punishment in other forms of care.[9]

9. CRIN recommended that Brunei Darussalam: 1) explicitly prohibit sentences of corporal punishment and life imprisonment in Brunei Darussalam, including detention at the Pleasure of His Majesty the Sultan and Yang Di-Pertuan, under all systems of justice and without exception to ensure full compliance with international standards; 2) raise the minimum age of criminal responsibility; and 3) provide disaggregated data about sentences handed down to children by offence committed and date, as well as information about children in detention, including gender, age and length of time spent in pre-trial detention in each case.[10]

10. GIEACPC recommended that legislation be enacted in Brunei Darussalam to explicitly prohibit corporal punishment of children in all settings, including the home, as a matter of priority.[11]

2. Administration of justice and the rule of law

11. CRIN further noted that the main laws governing juvenile justice are the Penal Code 1952, the Criminal Procedure Code 1951 and the Children and Young Persons Order 2006. In addition, CRIN stated that the Children and Young Persons Order defined a child as those under 14 years of age, a juvenile as aged 7-17 and a young person as 14-17. The Criminal Procedure Code defined a youthful offender as those between 8-17 years of age. The minimum age of criminal responsibility was set at 7.[12]

12. CRIN recommended that Brunei Darussalam: 1) raise the minimum age of criminal responsibility; and 2) provide disaggregated data about sentences handed down to children by offence committed and date, as well as information about children in detention, including gender, age and length of time spent in pre-trial detention in each case.[13]

Notes

[1] The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org.

Civil society

Individual submissions

CRIN	Amnesty International, London (UK);
GIEACPC	Global Initiative to End All Corporal Punishment of Children, London (UK).

[2] CRIN, para. 9.
[3] CRIN, para. 4.
[4] CRIN, paras. 5 – 7. See also GIEACPC, paras. 2.3. – 2.4.
[5] CRIN, para. 8.
[6] GIEACPC, para. 1.3.
[7] GIEACPC, para. 2.1.
[8] GIEACPC, para. 2.2.
[9] GIEACPC, para. 2. 5.
[10] CRIN, para. 16.
[11] GIEACPC, p. 1.
[12] CRIN, paras. 1 – 3.
[13] CRIN, para. 16.